

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re

**WESCO AIRCRAFT HOLDINGS, INC.,
et al.,¹**

Debtors.

Case No. 23-90611 (MI)

Chapter 11

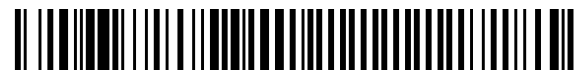
(Jointly Administered)

**DEBTORS' EMERGENCY
MOTION FOR ENTRY OF
A STIPULATION AND AGREED
ORDER REGARDING (A) CORRECTED
OMNIBUS (I) MOTION OF THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS FOR
EXCLUSIVE LEAVE, STANDING, AND AUTHORITY TO
PROSECUTE AND SETTLE CERTAIN CLAIMS, CAUSES
OF ACTION, AND CLAIM OBJECTIONS ON BEHALF OF
THE DEBTORS' ESTATES AND (II) CLAIM OBJECTION
AND (B) FIRST AMENDED JOINT CHAPTER 11 PLAN
OF WESCO AIRCRAFT HOLDINGS, INC. *ET AL.***

(RELATED TO DOCKET NOS. 1020, 1025, AND 1133)

**Emergency relief has been requested. Relief is requested not later than 2:00 p.m.
(Central Time) on January 4, 2024.**

¹ The Debtors operate under the trade name Incora and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at <http://www.kccllc.net/incora/>. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.



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If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on January 4, 2024, at 2:00 p.m. (Central Time) in Courtroom 404 on the 4th Floor of 515 Rusk, Houston, Texas 77002. Participation at the hearing will *only* be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 1 (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur's conference room number is 954554.

Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur's home page at <https://www.txs.uscourts.gov/content/united-states-bankruptcy-judge-marvin-igur>. The meeting code is "Judge Isgur". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Isgur's home page at <https://www.txs.uscourts.gov/content/united-states-bankruptcy-judge-marvin-igur>. Select the case name, complete the required fields, and click "Submit" to complete your appearance.

The above-captioned debtors and debtors in possession (the “**Debtors**”)² respectfully state as follows.

RELIEF REQUESTED

1. By this motion (the “**Motion**”), the Debtors seek approval of a stipulation (the “**Stipulation**”) entered into among the Debtors, the Committee, and certain holders of 10.50% Senior Secured First Lien PIK Notes Due 2026 (the “**Consenting 1L Noteholders**”) and, together with the Debtors and the Committee, the “**Parties**”), which, among other things, (a) sets forth terms under which the Committee has agreed to support an amended version of the *First Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et al.* [Docket No. 1133] (as further amended or supplemented from time to time, the “**Plan**”)³ that comports with the Stipulation (such an amended Plan, the “**Committee Acceptable Plan**”) and (b) holds in abeyance, pending confirmation of the Committee Acceptable Plan, the *Omnibus (I) Motion of the Official Committee of Unsecured Creditors for Exclusive Leave, Standing, and Authority to Prosecute and Settle Certain Claims, Causes of Action, and Claim Objections on Behalf of the Debtors' Estates and (II) Claim Objection* [Docket No. 994; corrected at Docket. Nos. 1020 and 1025] (the “**Committee Standing Motion**”).

2. The principal statutory bases for this Motion are sections 105 and 363 of the Bankruptcy Code, Rule 9019 of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”), and Rules 6004 and 9013-1 of the Bankruptcy Local Rules of the U.S. Bankruptcy Court for the Southern District of Texas (the “**Local Rules**”).

² A detailed description of the Debtors and their businesses is set forth in the *Declaration of Raymond Carney in Support of Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”) [Docket No. 13], filed with the Debtors’ voluntary petitions for relief filed under title 11 of the United States Code (the “**Bankruptcy Code**”), on June 1, 2023 (the “**Petition Date**”). The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the “**Committee**”) was appointed on June 16, 2023; no trustee, examiner or other official committee has been appointed.

³ Capitalized terms not otherwise defined bear the meanings ascribed to them in the Plan.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This Motion is a core proceeding under 28 U.S.C. § 157(b). Venue in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

I. THE COMMITTEE'S STANDING MOTION

4. Just weeks after the Committee's appointment, the Court entered an order approving, on a final basis, the Debtors' post-petition financing and use of cash collateral during these Chapter 11 Cases [Docket No. 396] (the "**DIP Order**"). Under the DIP Order, the Committee was given a "Challenge Period" through August 16, 2023, during which it was allowed to investigate, among other things, potential challenges to the validity of the Debtors' prepetition secured debt. The Committee's Challenge Period was extended by successive agreements. On November 27, 2023, the Committee filed the Committee Standing Motion, seeking, among other things, exclusive standing to prosecute and settle certain claims on behalf of the Debtors' Estates.

5. The Committee's proposed causes of action generally fell into the following five categories: (a) causes of action, including constructive fraudulent transfer, breach of fiduciary duties, and equitable subordination, seeking to challenge certain transactions and decisions relating to the merger of Wesco and Pattonair into one combined company—Incora—pursuant to a leveraged buyout that closed in January 2020; (b) a constructive fraudulent transfer claim seeking to challenge certain payments to Platinum Equity Advisors, LLC (together with its affiliates and investment funds, including Wolverine Top Holding Corporation, the "**Sponsor**") in exchange for advisory services; (c) causes of action, including actual and constructive fraudulent transfer, insider preferential transfer, breach of fiduciary duties, aiding and abetting and knowingly participating in breach of fiduciary duties, and equitable subordination, seeking to challenge the Debtors' 2022 Financing Transactions; (d) causes of action, including breach of fiduciary duties and constructive fraudulent transfer, seeking to challenge a 2022 amendment to the Debtors' ABL Credit Agreement; and (e) a claim seeking to avoid allegedly unperfected security interests on the

Debtors' bank accounts, director and officer insurance policies, and commercial tort claims. The Committee Standing Motion also sought disallowance of claims for applicable premium or make-whole amounts as unmaturing interest as well as any claims asserted by the Sponsor or by Carlyle Global Credit Investment Management, LLC (together with its affiliates and investment funds, "*Carlyle*") to the extent those entities have not returned to the Estates the value of any avoided transfer.

6. Pursuant to the most recent agreement on scheduling [Docket No. 972], briefs opposing the Committee Standing Motion are due on January 5, 2024, and replies in support of the Committee Standing Motion are due on January 26, 2024. The Debtors expect that, if the Committee Standing Motion goes forward, it will be opposed by many parties in interest, including the Debtors themselves, the First Lien Noteholder Group, the Sponsor, Carlyle, various other current or former noteholders, and the administrative agent for the ABL Facility.

II. THE CHAPTER 11 NEGOTIATIONS

7. As described at length in the First-Day Declaration, the Debtors entered 2023 facing substantial operational challenges, tightened liquidity, and complex litigation over their 2022 Financing Transactions. Beginning in January 2023, the Debtors engaged with critical creditor groups over the terms of a value-maximizing financial restructuring. Although the Debtors did not reach agreement on terms prior to filing these Chapter 11 Cases, the Debtors entered bankruptcy with strong support from the First Lien Noteholder Group and have continued to engage meaningfully with nearly all major stakeholder groups on the terms of a balance sheet restructuring. Alongside that process, the Debtors have successfully used the tools of the chapter 11 process to achieve massive operational and commercial improvements to their businesses, including by using post-petition financing to restore suppliers' confidence in the Debtors' liquidity position and by inducing customers to re-negotiate burdensome long-term contracts.

8. On November 17, 2023, the Debtors filed the Plan, which portrayed the overall framework of the Debtors' financial restructuring. Under that version of the Plan, the First Lien Noteholder Group (and any other holders of 1L Notes) will (a) convert their post-petition debt into

post-bankruptcy debt, (b) convert a portion of the pre-petition 1L Notes into additional post-bankruptcy debt, (c) receive a substantial portion of the Reorganized Debtors' equity and (d) control post-emergence governance. The holders of 1.25L Notes and unsecured claims (other than "convenience" claims) will receive a limited amount of equity. The holders of "convenience" claims (i.e., unsecured claims in an amount up to a certain threshold, excluding, for the avoidance of doubt, funded debt) will receive limited cash recoveries. The November 17 version of the Plan left open certain terms for further negotiation, including the numerical allocation of new equity and the amount of new debt.

9. In recent weeks, the Debtors have focused on multilateral negotiations among themselves, the First Lien Noteholder Group, the Committee, and leading 1.25L noteholders (Carlyle and the Sponsor) over the remaining terms of the Plan. Those discussions resulted in a comprehensive agreement to resolve the Committee Standing Motion completely and to allocate value among the various tranches of secured and unsecured creditors. As more fully set forth in the Stipulation, the Stipulation reflects the following agreements with the Committee:⁴

- a. The class of 1L Notes Claims will receive \$420,000,000 of New Takeback Debt and 96.5% of the post-emergence New Common Equity. That class will waive any recovery on account of its deficiency claims.
- b. The class of 1.25L Notes Claims (primarily consisting of Carlyle and the Sponsor's claims) will receive no recovery.
- c. The class of General Unsecured Claims will receive 3.5% of the New Common Equity.
- d. The class of "General Unsecured Convenience Claims" (consisting of unsecured claims up to \$1,500,000, but excluding, for the avoidance of doubt, funded debt) will not share in the New Common Equity, but will instead receive up to 10% recovery from a \$7,500,000 pool of cash.
- e. The Debtors will pay the reasonable fees and expenses of BOKF, NA in connection with the Financing Litigation and the Chapter 11 Cases.
- f. The Debtors will waive preference claims against critical vendors and other commercial parties that continue to do business with the Debtors.
- g. The Committee will support the Committee Acceptable Plan, including the releases of causes of action held by the Debtors' Estates. In support of those

⁴ The following summary is provided for purposes of convenience. To the extent any of the following summary is inconsistent with the Stipulation, the Stipulation itself shall control in all respects.

releases, the Committee Standing Motion will be held in abeyance and will be withdrawn automatically upon the effective date of a Committee Acceptable Plan.

10. In addition to the foregoing terms and resolutions, the Debtors anticipate entering into a Restructuring Support Agreement in the coming days with additional supporting parties — the First Lien Noteholder Group, Carlyle, the Sponsor, and Langur Maize, L.L.C. (a leading holder of 2027 unsecured notes). That Restructuring Support Agreement would ensure those parties' support for the Plan, including a commitment by Langur Maize to withdraw its own motion for standing to pursue certain causes of action. In combination, the Stipulation and the Restructuring Support Agreement will resolve several intertwined issues, at least as between the Debtors, the Committee and the other consenting parties, including the causes of action set forth in the Committee Standing Motion, rights to turnover of proceeds under prepetition intercreditor agreements, the valuation of shared collateral, and the treatment of deficiency claims and diminution-in-value claims.

BASIS FOR RELIEF

11. The Stipulation does not resolve all of the complex issues that have been set before the Bankruptcy Court in these Chapter 11 Cases, but, together with the anticipated Restructuring Support Agreement, it will resolve many of them. The Committee Standing Motion, by itself, presents seventeen proposed causes of action and two claim objections, each of which would need to be briefed and argued by numerous parties and evaluated by the Bankruptcy Court if they are not held in abeyance pursuant to the Stipulation. This component of the Stipulation alone will preserve substantial value for the Debtors' Estates, since several of the relevant parties are entitled to reimbursement of their legal fees from the Estates.

12. Perhaps more importantly, the Stipulation is an important step toward solicitation and confirmation of a plan of reorganization. Once the Stipulation has been approved and the anticipated restructuring support agreement entered into, only one significant group of creditors (the ad hoc group of formerly secured noteholders) will remain uncommitted to supporting the Plan. Said differently, the Stipulation and the Restructuring Support Agreement will assure the

Debtors that nearly every participant in the complex litigation over the 2022 Financing Transactions will stand in support of the Plan. The Debtors believe that this broad support will streamline the resolution of the ongoing litigation and pave the way for the Debtors to emerge from bankruptcy before the maturity of their post-petition financing on March 1, 2024.

13. Finally, nothing in the Stipulation prejudices the rights of any other parties. For instance, the formerly secured noteholders are still free to litigate their own motion for standing, prosecute their claims in the 2022 Financing Adversary Proceeding, or to oppose the Plan on any grounds whatsoever. Likewise, the Stipulation has no effect on Langur Maize's participation in the Financing Litigation, parts of which are expected to remain live even after execution of the Restructuring Support Agreement. The Stipulation simply reflects the value-preserving agreement of the Debtors, the Committee, and the First Lien Noteholder Group to resolve their own disputes through the proposed Plan.

14. For all of the foregoing reasons, the Debtors respectfully request that the Bankruptcy Court approve the proposed Stipulation and allow the Debtors to move forward in the Chapter 11 Cases, unencumbered by the Committee Standing Motion.

EMERGENCY CONSIDERATION

15. Pursuant to Local Rule 9013-1, the Debtors respectfully request emergency consideration of this Motion. If the Stipulation is approved, numerous parties will be able to forgo further briefing that is due imminently and will preempt further litigation regarding the Committee Standing Motion. This Stipulation also provides a means to eliminate potential objections from the Committee concerning approval of the Disclosure Statement. But the Estates will only benefit from these cost savings if the Stipulation is approved promptly, since the Debtors and other parties will be forced to complete unnecessary briefing in the absence of an order on the Stipulation. Additionally, emergency consideration is requested so that the Debtors and other parties can approach the upcoming hearing on approval of the Disclosure Statement (scheduled for January 11, 2024) with a clear view of each other's commitments to support and abide by the intertwined settlements that have been incorporated into the Plan. The timing is all the more important because little time

remains for the Debtors to solicit votes on the Plan, obtain Confirmation, and implement the Plan before the post-petition financing matures on March 1, 2024. For all these reasons, the Debtors believe that approval of the Stipulation on an expedited basis will avoid inflicting substantial cost and risk on the Debtors' Estates.

NOTICE

16. Notice of this Motion will be provided to all parties in interest listed on the master service list maintained by the Debtors pursuant to paragraph 11 of the Procedures for Complex Cases in the Southern District of Texas, including the Committee and the First Lien Noteholder Group. The Debtors respectfully submit that no further notice is required under the circumstances.

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Upon the foregoing Motion, the Debtors respectfully request that the Court approve the Stipulation and grant such other relief as is just and proper.

Dated: December 29, 2023

Respectfully submitted,

/s/ Charles A. Beckham, Jr.

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*Counsel to the Debtors and
Debtors in Possession*

CERTIFICATE OF ACCURACY

I certify, pursuant to Local Rule 9013-1(i), that the foregoing statements regarding the nature of the emergency set forth in the foregoing Motion are true and accurate to the best of my knowledge.

/s/ Charles A. Beckham, Jr.

Charles A. Beckham, Jr.

CERTIFICATE OF SERVICE

I certify that, on December 29, 2023, a true and correct copy of the foregoing document was served through the Electronic Case Filing system of the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' proposed noticing agent.

/s/ Charles A. Beckham, Jr.

Charles A. Beckham, Jr.

EXHIBIT 1

STIPULATION AND AGREED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re

**WESCO AIRCRAFT HOLDINGS, INC.,
et al.,¹**

Debtors.

Case No. 23-90611 (MI)

Chapter 11

(Jointly Administered)

**STIPULATION AND AGREED
ORDER REGARDING (A) CORRECTED
OMNIBUS (I) MOTION OF THE OFFICIAL
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EXCLUSIVE LEAVE, STANDING, AND AUTHORITY TO
PROSECUTE AND SETTLE CERTAIN CLAIMS, CAUSES
OF ACTION, AND CLAIM OBJECTIONS ON BEHALF OF
THE DEBTORS' ESTATES AND (II) CLAIM OBJECTION
AND (B) FIRST AMENDED JOINT CHAPTER 11 PLAN
OF WESCO AIRCRAFT HOLDING, INC. *ET AL.***

¹ The Debtors operate under the trade name Incoira and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at <http://www.kccllc.net/incora/>. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.

This stipulation (this “**Stipulation**”) is entered into by and between (a) Wesco Aircraft Holdings, Inc. (“**Wesco**”) and its affiliated debtors (collectively, the “**Debtors**”), (b) the Official Committee of Unsecured Creditors of the Debtors (the “**Committee**”), and (c) the holders of, or investment advisors, sub-advisors, or managers of funds or accounts that hold, 10.50% Senior Secured First Lien PIK Notes due 2026 under that certain *Indenture*, dated as of March 28, 2022, by and among Wesco as issuer, the guarantors from time to time party thereto, Wilmington Savings Fund Society, FSB, as trustee and notes collateral agent, that are members of the First Lien Noteholder Group (the “**Consenting 1L Noteholders**” and, together with the Debtors and the Committee, the “**Parties**”).

RECITALS

A. On November 17, 2023, the Debtors filed their *Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et al.* [Docket No. 962], and subsequently filed their *First Amended Joint Chapter 11 Plan of Wesco Aircraft Holdings, Inc. et al.* [Docket No. 1133] (as further amended or supplemented from time to time, the “**Plan**”).²

B. On November 27, 2023, the Committee filed its *Omnibus (I) Motion of the Official Committee of Unsecured Creditors for Exclusive Leave, Standing, and Authority to Prosecute and Settle Certain Claims, Causes of Action, and Claim Objections on Behalf of the Debtors' Estates and (II) Claim Objection* [Docket No. 994; corrected at Docket Nos. 1020 and 1025] (as amended or supplemented from time to time, the “**Committee Standing Motion**”).

C. The Parties have reached an agreement to resolve the claims and claim objections identified in the Committee Standing Motion, the terms of which are to be memorialized in an amended version of the Plan to be filed at a later date (together with any Definitive Documents related thereto, the “**Amended Plan**”).

² Capitalized terms not otherwise defined bear the meanings ascribed to them in the Plan, as filed on December 27, 2023.

D. Pending confirmation and the effective date of the Amended Plan, the Parties wish to continue certain deadlines relating to the Committee Standing Motion as set forth herein.

Therefore, the Parties stipulate and agree that:

STIPULATION

I. PLAN PROVISIONS

1. The Committee hereby agrees to support an Amended Plan (including, for the avoidance of doubt, the Debtor Releases and the Third-Party Releases), and use commercially reasonable efforts to support the implementation of the restructuring transactions contemplated therein, that contains the following terms, to be implemented in form and substance reasonably acceptable to the Committee (such Amended Plan, a “*Committee Acceptable Plan*”):

- a. Each holder of an Allowed Claim, other than an Administrative Expense, an Other Secured Claim, a Priority Tax Claim, a Priority Non-Tax Claim, an ABL Facility Claim, a 1L Notes Claim, a 1.25L Notes Claim, a PIK Notes Claim, an Intercompany Claim or a General Unsecured Convenience Claim, shall receive its Pro Rata share of 3.5% of New Common Equity, subject to dilution by any New Common Equity issued in respect of the Management Incentive Plan (the “*Settlement Equity Pool*”).
- b. The term “General Unsecured Convenience Claim” shall mean any Claim that is Allowed in an amount of \$1,500,000 or less (or a lesser threshold, as determined by the Debtors and the Committee prior to the date of the hearing on approval of the Disclosure Statement) (the “*Convenience Claim Threshold*”), other than an Administrative Expense, an Other Secured Claim, a Priority Tax Claim, a Priority Non-Tax Claim, an ABL Facility Claim, a 1L Notes Claim, a 1.25L Notes Claim, a 2024 Unsecured Notes Claim, a 2026 Unsecured Notes Claim, a 2027 Unsecured Notes Claim, a PIK Notes Claim, or an Intercompany Claim; *provided* that the Allowed amount of all Claims held by a holder and its Affiliates shall be aggregated for purposes of the foregoing calculation.
- c. Holders of General Unsecured Claims that are Allowed in an amount in excess of the Convenience Claim Threshold that otherwise meet the foregoing criteria may opt into treatment as a General Unsecured Convenience Claim by making a ballot election to waive any Allowed amounts that are in excess of the Convenience Claim Threshold.
- d. Each holder of an Allowed General Unsecured Convenience Claim shall receive such holder’s Pro Rata share of Cash in the amount of \$7,500,000 (the “*Settlement Cash Pool*” and, together with the Settlement Equity Pool, the “*Settlement Distributions*”); *provided* that in no event shall any holder of

General Unsecured Convenience Claims receive more than 10.00% of the Allowed amount of its General Unsecured Convenience Claim.

- e. The holders of 1L Notes Claims shall not receive any distributions from the Settlement Distributions on account of any deficiency claim in respect of such 1L Notes Claims.
- f. The holders of 1.25L Notes Claims shall not, without consent of the Committee, receive any distributions on account of such 1.25L Notes Claims, and each 1.25L Notes Claim shall be released and cancelled on the Effective Date.
- g. All reasonable and documented compensation, fees, expenses, and disbursements, including reasonable and documented attorneys' and agents' fees, expenses and disbursements, incurred by BOKF, NA in connection with the Chapter 11 Cases (including the Financing Litigation and the Restructuring), whether incurred prepetition or postpetition, shall be payable in Cash on the Effective Date.
- h. The Amended Plan shall provide that, upon the Effective Date, the DIP Order shall not prohibit the Debtors from paying all Allowed Retained Professional Fees incurred by the Committee, in accordance with the Plan.
- i. The Debtors shall waive all Causes of Action arising under section 547 of the Bankruptcy Code, section 548 of the Bankruptcy Code to the extent arising under the same facts as section 547, or any state law equivalent thereof, in each case, whether asserted offensively or defensively (including in response to any Claim filed against the Debtors' Estates) against any party that does business with the Debtors or has been identified as an eligible critical vendor as of the date of this Stipulation.
- j. The Amended Plan (including the exculpation and release provisions therein) shall explicitly provide that, to the extent permitted by law, the Committee and its members, and their Retained Professionals and other professional advisors, are "Exculpated Parties", "Releasing Parties" and "Released Parties" and will not be designated by the Debtors as "Excluded Parties."
- k. The Debtors shall make commercially reasonable efforts, prior to Confirmation, to offer full payment of critical vendor claims under the *Final Order (I) Authorizing the Payment of Prepetition Claims of Critical Vendors and Foreign Claimants, (II) Authorizing the Payment of Outstanding Orders, and (III) Granting Related Relief* [Docket No. 128] (the "**Critical Vendor Order**") to any person previously identified as an eligible critical vendor that has not yet executed a vendor payment agreement pursuant to the Critical Vendor Order; *provided* that the Debtors shall be under no obligation to offer or make any payments under the Critical Vendor Order beyond the "Payment Cap" set forth in the Critical Vendor Order as originally entered or to offer or make any payments that do not comply with the terms of the Critical Vendor Order, and shall be under no obligation to offer or make any payments to any vendor that does not execute a vendor payment agreement in substantially the form attached to the Critical Vendor Order.

1. With the consent of the Debtors and the First Lien Noteholder Group (in each case, not to be unreasonably withheld), the Committee may appoint, as of the Effective Date, a General Unsecured Claims Observer with duties limited to monitoring the Reorganized Debtors with respect to the Allowance of General Unsecured Claims and General Unsecured Convenience Claims; *provided* that the General Unsecured Claims Observer shall have standing to appear before the Bankruptcy Court with respect to matters arising out of or related to reconciliation, Allowance, and settlement of any General Unsecured Claims or General Unsecured Convenience Claims, as well to assert an objection thereto on any grounds (including that any Claim should not be Allowed or should be Allowed in a reduced amount).
 - m. The Reorganized Debtors shall consult with the General Unsecured Claims Observer with respect to the Allowance of General Unsecured Claims and General Unsecured Convenience Claims.
 - n. The General Unsecured Claims Observer may employ, without further order of the Bankruptcy Court, professionals to assist in carrying out the duties as limited above. The reasonable and documented fees and expenses of the General Unsecured Claims Observer, including reasonable and documented professional fees and expenses, shall be reimbursed by the Reorganized Debtors in the ordinary course of business in an aggregate amount not to exceed \$125,000 as soon as reasonably practicable after invoiced.
 - o. Upon the resignation or removal of the General Unsecured Claims Observer, the outgoing General Unsecured Claims Observer may appoint a successor General Unsecured Claims Observer with the consent of the Reorganized Debtors (not to be unreasonably withheld); *provided* that, in the event of the death of the General Unsecured Claims Observer, the successor General Unsecured Claims Observer shall be appointed by the Reorganized Debtors.
 - p. Upon the resolution of all General Unsecured Claims and General Unsecured Convenience Claims, the General Unsecured Claims Observer shall be released and discharged of and from further authority, duties, responsibilities, and obligations relating to and arising from and in connection with the Chapter 11 Cases.
 - q. The Debtors and the Committee shall engage in good faith discussions of reasonable limitations on the rights and duties of the General Unsecured Claims Observer, including the range of de minimis General Unsecured Convenience Claims that the Reorganized Debtors may agree to Allow without oversight of the General Unsecured Claims Observer.

2. The provisions of the Amended Plan that relate, in a material respect, to (a) the timing of distributions on account of General Unsecured Claims or General Unsecured Convenience Claims; (b) the assumption or rejection of executory contracts (including, for the avoidance of doubt, the Schedule of Assumed Executory Contracts and Unexpired Leases and the

Schedule of Rejected Executory Contracts and Unexpired Leases); (c) the settlement or allowance of Disputed General Unsecured Claims or Disputed General Unsecured Convenience Claims (including the Convenience Claim Threshold); or (d) the terms set forth in Paragraph 1 (such provisions, the “*Committee Consent Provisions*”) shall be in form and substance reasonably acceptable to the Committee.

3. Any Plan (including supplements to the Plan) filed by the Debtors after the date of this Stipulation shall automatically be deemed a Committee Acceptable Plan unless the Committee notifies counsel to the Debtors and the First Lien Noteholder Group in writing within five Business Days after such filing that the Plan does not comply with this Stipulation and the Committee does not consider the Plan to be a Committee Acceptable Plan.

II. COMMITTEE STANDING MOTION

4. Upon the Committee’s entry into this Stipulation, the deadline for any party in interest (whether or not a Party to this Stipulation) to object to the Committee Standing Motion shall be postponed to January 12, 2024, at 5:00 p.m. (CST).

5. Upon approval of this Stipulation by the Bankruptcy Court, all dates concerning the Committee Standing Motion, including all deadlines for filing oppositions and replies related thereto (as set forth in the *Notice of Fifth Extension of the Challenge Period Under the Final DIP Order Solely with Respect to the Official Committee of Unsecured Creditors* [Docket No. 972]) shall be adjourned and the Committee Standing Motion shall be held in abeyance pending confirmation of the Committee Acceptable Plan, which shall provide for the automatic withdrawal of such Committee Standing Motion upon the occurrence of the Effective Date of a Committee Acceptable Plan; *provided* that, prior to the occurrence of the Effective Date of the Committee Acceptable Plan, the Committee may take actions reasonably necessary to preserve its ability to pursue the Committee Standing Motion (and the Causes of Action identified therein) in the event the Effective Date of the Committee Acceptable Plan does not occur, including attending depositions propounded by other parties in interest, reviewing documents produced in response to requests of other parties in interest, responding to pleadings filed in matters other than the

Committee Standing Motion, and participating in any hearings or trial conducted in connection with the claims asserted, or sought to be asserted, by the holders of the 2024 Unsecured Notes Claims and the 2026 Unsecured Notes Claims (the “*Committee Permitted Actions*”).

III. COMMITTEE OBLIGATIONS

6. The Committee shall not, and shall not direct or encourage any other Person to, directly or indirectly, (a) vote any Claims to reject a Committee Acceptable Plan, (b) object to, delay, impede, or take any other action to interfere with, delay, or postpone solicitation, acceptance, consummation, or implementation of a Committee Acceptable Plan (including not objecting to entry of the Disclosure Statement Order), (c) propose, file, support, or vote for any restructuring, sale of assets, workout, or plan of reorganization for the Debtors other than the Committee Acceptable Plan or (d) investigate, assert, prosecute or support any Financing Litigation or “Challenge” as defined in the DIP Order; *provided* that the Committee shall be entitled to engage in the Committee Permitted Actions.

7. The Committee shall provide, for the inclusion in the Solicitation Materials, a letter, reasonably acceptable to the Debtors, recommending that all holders of General Unsecured Claims and General Unsecured Convenience Claims vote in favor of the Committee Acceptable Plan and grant the Third-Party Release contained in the Committee Acceptable Plan.

IV. TERMINATION EVENTS

8. Upon the occurrence and continuance of any of the following events (each, a “*Termination Event*”), the Committee may terminate this Stipulation by the delivery of written notice via email to counsel to the Debtors and the First Lien Noteholder Group (which notice shall also be filed by the Committee to the docket in the Chapter 11 Cases) (such notice, a “*Termination Notice*”):

- a. the breach of this Stipulation by the Debtors or the Consenting 1L Noteholders, which remains uncured following five Business Days’ notice of such a breach;
- b. termination of the Restructuring Support Agreement by the Debtors or the Consenting 1L Noteholders;

- c. the Effective Date of the Committee Acceptable Plan has not occurred on or before June 1, 2024, subject to extension if reasonably necessary to secure necessary regulatory or other government approvals;
- d. the filing by the Debtors or the Consenting 1L Noteholders of any chapter 11 plan that is not a Committee Acceptable Plan or which contains Committee Consent Provisions (including in any document ancillary to such plan) that are not reasonably acceptable to the Committee, which remains uncured following five Business Days' notice;
- e. the filing or support by the Debtors or the Consenting 1L Noteholders of any motion, pleading, or similar document with a court of competent jurisdiction in a manner that is materially inconsistent with a Committee Acceptable Plan;
- f. the issuance by any governmental authority, including the Bankruptcy Court and including any regulatory authority or court of competent jurisdiction, of any final, non-appealable injunction, judgment, decree, ruling, or order restraining, enjoining, or otherwise prohibiting consummation of a Committee Acceptable Plan; *provided* that the Debtors shall have ten Business Days to obtain relief that would allow consummation of the restructuring transactions consistent with a Committee Acceptable Plan;
- g. the appointment of an examiner (with expanded powers beyond those set forth in section 1106(a)(3)–(4) of the Bankruptcy Code), or a trustee or receiver, in each case by final, non-appealable order in one or more of the Chapter 11 Cases;
- h. the entry of an order by the Bankruptcy Court or other court of competent jurisdiction: (1) denying confirmation of the Committee Acceptable Plan, or confirming a chapter 11 plan that is not consistent with a Committee Acceptable Plan; (2) reversing or vacating an order confirming a Committee Acceptable Plan; (3) approving any chapter 11 plan, disclosure statement, or related document, in each case, that is not consistent with a Committee Acceptable Plan or which contains Committee Consent Provisions that are not reasonably acceptable to the Committee; or (4) terminating the Debtors' exclusive right to file a plan or plans of reorganization or to solicit acceptances thereof in advance of the applicable deadlines pursuant to section 1121 of the Bankruptcy Code;
- i. the conversion of all Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code or the dismissal of all of the Chapter 11 Cases;
- j. the entry of an order granting any of the claims asserted by or on behalf of the holders of the 2024 Unsecured Notes or the 2026 Unsecured Notes in the 2022 Financing Adversary Proceeding or the 2022 Financing State Court Litigation, to the extent such an order makes it infeasible to obtain confirmation of a Committee Acceptable Plan;
- k. the failure of the Debtors to pay the fees and expenses of the Committee's Retained Professionals as set forth in this Stipulation in accordance with the orders of the Bankruptcy Court (other than paragraph 20 of the DIP Order), which remains uncured following five Business Days' notice;

- l. the Committee provides the Debtors with a Fiduciary Out Notice (as defined below); or
- m. the Debtors provide the Consenting 1L Noteholders with a notice analogous to the Fiduciary Out Notice (as defined below), or the Debtors announce or execute a definitive agreement, in each case, with respect to an alternative transaction that is not consistent with a Committee Acceptable Plan.

V. EFFECT OF TERMINATION

9. Upon the delivery by the Committee of a Termination Notice, but subject to any applicable cure period (the “*Termination Date*”), this Stipulation shall be of no further force or effect as to the Committee and the Committee shall be automatically released from its commitments, undertakings, and agreements under or related to this Stipulation and shall have the rights and remedies that it would have had and shall be entitled to take all actions that it would have been entitled to take had it not entered into this Stipulation, including with respect to any and all Claims or causes of action; *provided* that the provisions of paragraph 10 of this Stipulation shall survive the Termination Date.

10. Upon the occurrence of a Termination Date (if any), (a) the Committee Standing Motion shall no longer be adjourned or held in abeyance; *provided* that the Challenge Period (as defined in the DIP Order) shall continue to be tolled, solely with respect to the Committee’s assertion of the Challenges set forth in the proposed complaint attached to the Committee Standing Motion, pending entry of a final order resolving the Committee Standing Motion in accordance with the DIP Order; (b) any party that wishes to object to the Committee Standing Motion shall have no less than ten Business Days from the Termination Date to file such objections; (c) the Committee shall file any reply in support of the Committee Standing Motion within five Business Days from such objection deadline; (d) subject to the Court’s availability, an expedited hearing on the Committee Standing Motion shall occur promptly following such reply deadline; and (e) the Parties shall undertake commercially reasonable best efforts to expedite the hearing on the Committee Standing Motion and, to the extent the Committee Standing Motion is granted, a trial on the merits of the underlying claims.

VI. FIDUCIARY OUT

11. Nothing in this Stipulation shall require the Committee to take any action, or to refrain from taking any action, that the Committee determines, in good faith upon the advice of counsel and in light of changed circumstances not known or reasonably anticipated as of the date of this Stipulation, will constitute a breach of any fiduciary obligations of the Committee under applicable law (“*Committee Fiduciary Action*”); *provided* that the Committee shall give the Debtors and the First Lien Noteholder Group written notice promptly upon any Committee Fiduciary Action that would otherwise be inconsistent with this Stipulation (a “*Fiduciary Out Notice*”) not later than one Business Day following any determination to take or not take any action in accordance with this paragraph 11.

VII. MISCELLANEOUS

12. In entering into this Agreement, neither the Debtors nor the Consenting 1L Noteholders agree to the validity of the claims and claim objections identified in the Committee Standing Motion, or any other claims, and expressly reserve all rights and defenses in respect thereof.

13. Upon the filing of this Stipulation or December 29, 2023, whichever is later, in accordance with and subject to the terms of the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 606] (the “*Interim Compensation Procedures Order*”), the Debtors shall promptly pay all then-unpaid fees and expenses identified in Monthly Fee Statements (as defined in the Interim Compensation Procedures Order) that have been filed by the Committee’s Retained Professionals, notwithstanding anything in the DIP Order or such Monthly Fee Statements to the contrary.

14. Subject to the other terms of this Stipulation, prior to the occurrence of the Termination Date, the Parties agree to negotiate in good faith and use commercially reasonable efforts to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, from time to time, to effectuate the restructuring, as applicable.

15. This Stipulation is subject to the approval of the Bankruptcy Court, except that paragraphs 4, 11 and 13 shall be effective in accordance with their terms without need for approval of the Bankruptcy Court. Notwithstanding any provision of the Bankruptcy Rules or Local Rules, the terms of this Stipulation shall be immediately effective and enforceable upon its approval by the Bankruptcy Court.

16. Except as expressly set forth in this Agreement, each of the Parties hereto reserves all rights and remedies that it may have against the other.

17. This Agreement contains the entire agreement between the parties regarding the provisions set forth herein and may only be modified in a writing signed by the Parties or their duly appointed agents.

18. The Debtors and their agents are authorized to take all steps necessary or appropriate to carry out this Stipulation.

19. The Court shall retain jurisdiction over all matters arising from or related to the implementation, interpretation or enforcement of this Stipulation.

AGREED as to form and substance.

/s/ Charles A. Beckham, Jr.

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Counsel to the Consenting IL Noteholders

The foregoing stipulation is hereby **APPROVED** and **SO ORDERED**.

Dated: _____
Houston, Texas

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE